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Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

SANDRA TURNER, ET AL.

PETITIONERS

v.

LINDA MCMAHON, OTIS R. BOWEN, ET AL.

RESPONDENTS

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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TABLE OF AUTHORITIES

Page(s)

Cases

Brown v. Swann, 10 Pet. 496 (1836) . . . 2

Hecht Co. v. Bowles, 321 U.S. 321 (1944). 2

Porter v. Warner Holding Co., 328 U.S. 395 (1946) 1

TVA v. Hill, 437 U.S. 153 (1978) . . . 2,3

Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982) 1,3

Statutes

16 U.S.C. §1531. 3

42 U.S.C. §602(a)(22). 1,5

The court of appeals opinion raises an important question requiring review because it establishes, absent any explicit congressional direction, a novel exception to the equitable jurisdiction of courts to determine who bears the consequences of a reversed injunction. Neither the statutory language nor the legislative record of the AFDC overpayment provision, 42 U.S.C. §602(a)(22), indicates that Congress intended to have such an unprecedented effect upon the judiciary's traditional equitable powers.

Petitioners do not dispute that Congress may limit a federal court's inherent power to apply traditional equitable remedies. The key point set forth in the Petition for a Writ of Certiorari but ignored by respondents is that such limitations are extraordinary and ought not be inferred. Weinberger v. Romero-Barcelo, 456 U.S. 305, 313 (1982); Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946);

Hecht Co. v. Bowles, 321 U.S. 321, 329-30 (1944); Brown v. Swann, 10 Pet. 496, 506 (1836); Petition, at 19-24.

When Congress conditions or limits a court's equitable jurisdiction, it does so explicitly and plainly. Indeed, the very statutes cited by the United States in its opposition brief (Fed. Opp. at 8) demonstrate the directness and clarity which characterize how Congress acts when it seeks to curb the equitable powers of the courts. Such language is a far cry from the inferences which need to be drawn from the phrase "any overpayment" to reach a comparable result in this case.

In a similar vein, this Court has been wary of overstating congressional limitations on a court's traditional discretion to issue an injunction to enforce legislative policies. State respondents cite TVA v. Hill, 437 U.S. 153 (1978), as though it stands for the proposition that legislative language easily can be read to curtail a

court's discretion (State Opp. at 6-8). But Hill did not involve divesting the court of an important aspect of its equitable jurisdiction, as does the instant case. Rather, Hill concerns the court's duty to exercise its equitable powers to enforce a very specific legislatively enacted policy judgment.[1]

Hill appears to be a case very much confined to its particular facts. In Weinberger v. Romero-Barcelo, 456, U.S. 305, subsequent case also involving fairly specific policy directions, this Court distinguished Hill and refused to hold that a district court had to issue an injunction. The Court emphasized that it does "not lightly assume that Congress has

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[1] The Endangered Species Act, 16 U.S.C. §1531 et seq., at issue in Hill, was very unusual in its degree of specificity regarding the decisive weight to be given the preservation of an endangered species, such as the snail darter, as against all other considerations. The Court therefore held that the district court had no choice but to issue the requested injunction to enjoin completion of the endangering dam.

intended to depart from established [equity] principles." Id. at 313.

Nevertheless, the Ninth Circuit lightly assumes just such a departure, disregarding the impact of its interpretation on the traditional powers of a court of equity to manage the effects of an injunction reversed on appeal. The problem posed by this case is not potential judicial sabotage of a legislative policy judgment as the state suggests (State Opp. at 6-7), but rather an inappropriate erosion of the judiciary's own power. It is a problem which warrants full review by this Court.

The United States seeks to create an impression that there is no curtailment of equitable jurisdiction by emphasizing that individuals charged with an overpayment can obtain judicial review (Fed. Opp. at 8-9, n.9). As discussed in the Petition, at 17-19, judicial review under the court of appeals opinion would be limited to deter-

mining the mathematical accuracy of the assessed amount. No court would have jurisdiction to decide whether recoupment is equitable--the central issue in any restitution proceeding after the reversal of an injunction.

Both respondents note that, in contrast with some other statutes, 42 U.S.C. §602(a)(22) does not provide for waiving an overpayment when collection of the overpayment would be against equity and good conscience. Fed. Opp. at 6, State Opp. at 13. However, petitioners do not contend that either a court or a welfare agency has authority under Section 602(a)(22) to waive overpayments.[2] They only contend that there is no evidence in the language or legislative history of the section that Congress intended to include benefits paid

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[2] This is precisely why judicial review of assessment of an overpayment under section 602(a)(22) is not comparable to a restitution proceeding after reversal of an injunction.

under a subsequently reversed injunction within its conception of "overpayments." Petition, at 30-42. Accordingly, the statute should not be construed to divest a district court from its equitable jurisdiction to decide which party should bear the costs of a reversed injunction. The problem raised is of an entirely different institutional dimension than the one addressed by respondents in their arguments.

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Respectfully submitted,

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